

**Deposition Designations for:
EDWARD NICK CARVEY
December 15, 1999**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence**

AO = Attorney Objection

BE = Best Evidence

Cum. = Cumulative

Ctr = Counter Designation

Ctr-Ctr = Counter-Counter

ET = Expert Testimony

F = Foundation

408 = Violation of FRE 408

H = Hearsay

IH - Incomplete Hypothetical

L = Leading

LA = Legal Argument

LC = Legal Conclusion

LPK - Lacks Personal Knowledge

LO = Seeking Legal Opinion

NT = Not Testimony

Obj: = Objection

R = Relevance

S = Speculative

UP = Unfairly Prejudicial under Rule 403

V = Vague

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 MISSOULA DIVISION

4	EDWARD NICK CARVEY and ESTHER)	
5	M. CARVEY, husband and wife,)	Cause No.
	Plaintiffs,)	CV-98-142-M-DWM
6)	
	vs)	
7)	
8	W.R. GRACE & CO.-Conn, a)	
	Connecticut corporation, EARL D.)	
9	LOVICK and DOES I-IV,)	
	Defendants.)	
10)	
11	EDWARD NICK CARVEY and ESTHER)	Cause No.
12	M. CARVEY, husband and wife,)	CV-99-104-M-LBE
	Plaintiffs,)	
13)	
	vs)	
14)	
15	W.R. GRACE & CO.-Conn, a)	
	Connecticut corporation, W.R.)	
16	GRACE & CO., a Delaware)	
	corporation, W.R. GRACE, a/k/a)	
17	GRACE, an association of)	
	business entities, MONTANA)	
18	VERMICULITE COMPANY, a Montana)	
	corporation (dissolved), EARL D.)	
19	LOVICK and DOES I-IV,)	
	Defendants.)	
20)	

21 VIDEO DEPOSITION
22 OF

23 EDWARD NICK CARVEY
24 (On Behalf of the Plaintiffs)

25 Reported by Debra M. Hedman, RPR, RMR, and Notary
Public for the State of Montana, Flathead County

1 '70s.

2 Q Okay. And when you said you worked in the
3 woods, what kind of work specifically did you do?

4 A I was a timber faller. Always a timber
5 faller.

6 Q Are some of your kids still logging today?

7 A They are.

8 Q Do you remember when you retired from
9 logging?

10 A It was about '95 or '96 I retired
11 altogether. I've been semiretired for, oh, hell,
12 ten years, I guess.

13 Q Okay.

14 A But not completely. I would go out and
15 work some, you know.

16 Q Do you remember how old you were when you
17 stopped logging for good?

18 A About '95, I was about 75 -- 74, 75.

19 Q And you were still able to do a lot of
20 that work?

21 A Now?

22 Q At the time that you retired?

23 A Not a lot, but I managed to do it, yeah.

Libby [24 Q I'd like to talk specifically now about
25 the experience you had working at Zonolite. Can you

Libby

1 tell us how old you were when you started at
2 Zonolite?

3 A I was nineteen or twenty.

4 Q Do you remember why you went to go to work
5 at Zonolite?

6 A Yes, I kind of -- It was a -- I always
7 wanted to go to Alaska and have a fishing boat,
8 but my mother, she knew the superintendent, so she
9 got me a job down at -- up at the Zonolite so I
10 wouldn't get killed. And it killed me anyway,
11 eventually, but --

12 Q She didn't want you to go to Alaska?

13 A No, she didn't want me to go to Alaska.
14 She was afraid I would get killed or drowned or
15 something. So she was one of the instigators of me
16 getting the job at Zonolite.

17 Q And you agreed?

18 A I agreed.

19 Q What was your first job at Zonolite?

20 A It was always the same. I worked on the
21 top floor, greasing and just watching and keeping
22 the mill running and cleaning up at the end of the
23 shift.

24 Q When you say "the top floor," do you mean
25 the top floor of the mill?

Libby [1

- 1 A The top floor of the mill, right.
- 2 Q Nick, I would like to direct your
- 3 attention to this photo here, Exhibit 127. Can I
- 4 ask you to show that to the camera? Does that --
- 5 A Yeah, that's basically as I remembered.
- 6 Q That's the mill about the time that you
- 7 were there?
- 8 A That's basically -- As I remember it,
- 9 that's about the way it looked.
- 10 Q Okay. How about this photo? Does that --
- 11 It's Exhibit 2-26. Is that also --
- 12 A Yeah, that's basically the same, too.
- 13 Q Can I ask you to show that to the camera.
- 14 A Oh.
- 15 Q Can you point out the mill on there?
- 16 A Yeah, right down there is the mill.
- 17 This -- There is a big bin up here and the mill is
- 18 down here (indicating).
- 19 Q So it's there on that side, on the left?
- 20 A Yeah, on the left -- On the right would
- 21 be --
- 22 Q Oh, on the right. I'm sorry.
- 23 A On the right would be the mill, yeah.
- 24 Q Okay.
- 25 A This is the big bin up here where the

1 trucks dumped the ore into the grizzly or whatever
2 you want to call it.

3 Q So when you were on the top floor, the ore
4 was coming in --

5 A Right.

6 Q -- to the mill?

7 A It came in in the elevators and -- It
8 went up and down stairs, I don't know, two or three
9 times -- different times, and where they dried it
10 and where it went through screens and sized it, you
11 know. I don't remember exactly how many elevators,
12 but it went from the top to the bottom and back up
13 to the top to the bottom two or three times.

14 Q Okay. Thank you. Was the mill a dusty
15 place to work?

16 A It was dusty.

17 Q Can you describe the dust conditions that
18 you remember?

19 A Well, I can remember sometimes we had --
20 near the end of shift it would be three, four, five
21 inches of dust all over the floor. Sometimes you
22 couldn't see all the way across the mill hardly.
23 Other times it weren't that bad. I don't know what
24 the --

25 Q Could you --

Libby

Libby

1 A But there was always lots of dust.
2 Q Could you see the dust in the air?
3 A Oh, yeah.
4 Q Did you say before that part of your job
5 was to clean up some of the dust?
6 A Yes. You swept the floor every night.
7 You cleaned up your floor.
8 Q So every night --
9 A At the end of the shift.
10 Q How did you clean the dust?
11 A Well, you had a big push broom and you
12 swept it with that and then you shoveled it down the
13 chute. I'm not real sure where it went, but I think
14 it went down -- I think they skipped it down the
15 hill and hauled it off somewhere, but I'm not
16 positive of that.
17 Q Was there a ventilation system in the mill
18 when you worked there that you remember?
19 A Just --
20 Q I'm sorry.
21 A Huh?
22 Q Was there a ventilation system in the mill
23 that you remember when you worked there?
24 A I don't -- Seemed like after the war there
25 was some kind of a ventilation -- a dust collector

Libby

1 or something there, but before the war, I don't
2 know.

3 Q Was it specifically your job to clean up
4 the dust or were there other people who --

5 A Everybody did their own floor.

6 Q So you were responsible for the top floor?

7 A I was responsible for the top floor.

8 Q Do you remember whether some days produced
9 more dust than other days?

10 A There were. Some days was real bad and
11 sometimes not that bad.

12 Q Do you remember whether that was a
13 function of anything in particular?

14 A No, I don't.

15 Q Did you get covered with dust when you
16 were sweeping?

17 A Did. We did.

18 Q How did you get the dust off of you?

19 A Well, mostly we just -- we would get down
20 there and we would take our hats or -- we mostly all
21 wore stocking hats or a hat and just beat it off
22 whenever we -- before we got in the cars and rode
23 home.

24 Q Did you have any other duties in the mill
25 besides sweeping and cleaning up the top floor?

Libby

1 A Well, if something broke down, like the
2 elevators or something, they stopped, the ore would
3 keep coming in and plugging it and everybody that
4 was on the shift -- even the skip operator came and
5 we cleaned them out and got the mill running as soon
6 as possible.

7 Q Was the mill running for most of the time
8 that you were in it?

9 A Oh, yeah -- Only when something was broke
10 down, it ran 24 hours a day when we were running it,
11 three shifts.

12 Q How long was your shift?

13 A Eight hours.

14 Q Did you ever work outside of the mill?

15 A Just going up into the big bin or the
16 grizzly. In the winter it would freeze to the sides
17 and then everybody would have to go -- Well, not
18 everybody, but two or three of us would go up there
19 and they had bars and shovels and we would hack at
20 it until it came down and got back onto the grizzly
21 or went into the mill. And that's about the only
22 place I worked outside.

23 Q How long would that usually take when you
24 had to do that?

25 A Well, just depended on how bad it was.

Libby

1 Sometimes most of the night, if it happened to be
2 25, 30 below zero or something, it could come down
3 the hill and be kind of damp, that ore, and it would
4 freeze to the side and you would have to keep
5 breaking it down.

6 Q How often would you say that happened as
7 far as days per week, maybe?

8 A Oh, some winters -- sometimes two or three
9 times a month, just depended on how cold it was.

10 Q Okay. When you were hired at Zonolite,
11 did the company warn you that the dust could be
12 harmful to you?

13 A No.

14 Q When you were hired, did the company warn
15 you that asbestos could harm you?

16 A No.

17 Q When you were hired at Zonolite, did any
18 of the other workers ever warn you about the dust or
19 the asbestos?

20 A No.

21 Q Did you ever see any signs about dust or
22 asbestos?

23 A Not that I can recall. I don't know.

24 Q Did your supervisors ever warn you that
25 the dust could harm you?

Libby

[1

A No.

2 Q Do you remember any other workers talking
3 about the dust when you worked there?

4 A Oh, we sometimes, when we would get down
5 the hill, we'd say it was dirty as hell or
6 something, and knocking the dust off, you know.
7 Sometimes we would say it was a lot worse than other
8 nights, you know. But that's about as far as it
9 ever went.

10 Q Did you or any other workers ever complain
11 to the company or your supervisors about the dust?

12 A I never did. I don't know whether the
13 other workers did or not, but I never.

14 Q Were you aware when you worked there that
15 there was asbestos present in the mill and at the
16 mine?

17 A I was aware that there was asbestos
18 because it would plug up the crushers all the time
19 and that's usually what stopped the mill.

20 Q And you knew that that was asbestos?

21 A Yeah, that's what they had -- Sometimes
22 they would come off the hill and tell us that there
23 was a lot of asbestos coming down.

24 Q At the time that you knew that asbestos
25 was present there, did you know that asbestos was

1 BY MR. LACEY:

2 Q Nick, again, you can talk about your
3 understanding of your conversation with Dr. Ivy
4 about your breathing problems.

5 A Not fully discussed what was really
6 causing it, no.

Libby

7 Q Okay. Have you seen any lung specialists?

8 A I went to see Dr. Whitehouse in Spokane.

9 Q What kinds of tests did you undergo when
10 you went and saw Dr. Whitehouse?

11 A Well, let's see, he took x-rays and then
12 he put me in a glass cage, and he turned up the heat
13 and turned down the heat, and you breathed, and then
14 you went and rested -- took some kind of medicine
15 and rested for a while, and then I went back and
16 went through it again.

17 Q Do you recall the results of those tests?

18 A He said -- Let's see, he said there was no
19 doubt that you have an asbestos problem.

20 Q Did you discuss your condition with
21 Dr. Whitehouse?

22 A He discussed it with me. He said there is
23 no known cure. And he said, Come back in -- He
24 said, I'd like to see you in a year or so, but I
25 never did go back. Cost me a couple hundred bucks,

Arrowood
Obj:
H

Libby

Arrowood
Obj: F

1 and he said there wasn't nothing they could do about
2 it anyway, so --

3 Q What was your reaction when you were first
4 diagnosed by Dr. Whitehouse with an asbestos
5 disease?

6 A Well, I knew that eventually it was going
7 to kill me, and I didn't really feel very good about
8 it, no. But I really -- Reaction at that time? I
9 -- I don't know as I really had too much reaction.
10 It was just kind of a thing like you said, well, you
11 have got it and you ain't going to get over it and
12 you're going to have to live with it until you die,
13 and so I kind of accepted it.

14 Q What's your understanding about how your
15 condition is going to progress?

16 A Well, right now the understanding is if I
17 live for another three, four, five years, I'll be on
18 oxygen by then.

19 Q Have you talked with doctors about --

20 A I've talked to Dr. Cash about it, my heart
21 doctor, right.

22 Q And they suggested in about three or four
23 years --

24 A She suggested probably within the next
25 three or four years, if I live that long, I'll be on

Libby

1 oxygen.

2 Q Are you noticing that your breathing
3 problems are continuing to get worse?

4 A I do.

5 Q What kinds of things do you notice?

6 A Well, I notice -- I used to be able to
7 load my John boat which weighs 40 pounds and pick it
8 up and put it in there, and now I'm putting it in
9 there one end at a time. By the time I get it in
10 the back of my pickup I got to hang on to the side
11 there and get some breath before I can get up around
12 the pickup to go again.

13 Like, if I go up the stairs there on the
14 thing there, by the time I get over to the table,
15 that's about it.

16 Q Had you noticed those problems about a
17 year ago?

18 A I noticed them a year ago but they weren't
19 as bad. Two years ago they weren't as bad, but --

20 Q Do you have any coughing problems?

21 A Do I have what?

22 Q Any coughing problems?

23 A I do.

24 Q What kinds of stuff causes you to cough?

25 A Just naturally just builds up -- fluid or

Libby

1 something builds up in my lungs and I have to cough
2 it up.

3 Q Can that be severe at times for you?

4 A Huh?

5 Q Do you have a severe cough at times?

6 A Sometimes it won't come loose and then you
7 (gesturing) -- That's when it's bad. If it's coming
8 up easy, like it is today, well, it's not that bad,
9 but some days it won't come up that easy.

10 Q Nick, have you ever had a heart attack?

11 A Well, there is a question about that. I
12 fell over unconscious one time, but when I got down
13 to the hospital and they run me through all them
14 tests, and I asked my heart specialist, he said, I'm
15 not sure you had a heart attack.

16 Q After that happened, did you begin to see
17 a heart doctor and get some treatment for your
18 heart?

19 A I did.

20 Q What kinds of things happened --

21 A They put in a pacemaker.

22 Q Do you know why you got a pacemaker?

23 A I had a slow heartbeat, he said.

24 Q Did you notice that the pacemaker helped
25 you feel better?

1 kinds of medication you have --

2 A I have two breathing medicines I take --
3 inhalers. And then I take Coumadin, a blood
4 thinner. And then I take a Zantac for a gas
5 situation.

6 Q Do those medications, specifically the
7 breathing ones, do they help you to breathe a little
8 bit easier?

9 A They do loosen it up. It makes that stuff
10 come up a little easier, you know.

11 Q And when do you use the inhalers?

12 A Well, one of them I use twice a day, two
13 puffs in the morning and two at night. And then I
14 have the little one I carry with me, whenever I get
15 breathing bad, that I can use any time I want to.

16 Q Are you finding that you use those any
17 more than you used to?

18 A I didn't hardly -- hardly just use this
19 one here at all a couple years ago, but lately it's
20 four or five times a day now, maybe more some days.

Libby

21 Q What kinds of activities these days make
22 you short of breath?

23 A What?

24 Q What kinds of activities these days make
25 you short of breath?

Libby

1 A Just about anything. Even if I walk
2 from -- fifty feet or a hundred feet, if I speed
3 up, then I'm sure to run out of breath.

4 Q Do you notice that there are activities
5 that you used to like to do that you don't do any
6 more because of the breathing problem?

7 A Well, yeah, I used to love to chase them
8 elk and stuff, but about all I can do any more is
9 road hunt. I used to like to track them old smart
10 bulls and white tails. Excuse me.

11 Q Did you used to hunt pretty regularly?

12 A All the time.

13 Q How often do you hunt now?

14 A I hunt quite regular. I road hunt in the
15 car or duck hunt or something in the blind.

16 Q Do you ever get out and go up hills or do
17 anything like that anymore?

18 A No.

19 Q Do you like to fish?

20 A I do.

21 Q I have a photo here, Nick, I would like
22 you to describe. That's Exhibit 515-10. Is that
23 you fishing?

24 A Yeah, that's me. I think this was
25 probably taken on Sophie Lake.